

# TRANSCRIPT OF PROCEEDINGS

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEB 4 4 02 PM '03

FCC-0413 REC

In the Matter of:

RADIO MOULTRIE, INC.,  
Licensee, Station WMGA (AM),  
Moultrie, Georgia

EB Docket No. 02-367

DATE OF HEARING: — JANUARY 23, 2003 — VOLUME: 1

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

+ + + + +

PRE-HEARING CONFERENCE

+ + + + +

In the matter of:

RADIO MOULTRIE, INC.  
Licensee, Station  
WMGA (**AM**), Moultrie,  
Georgia.

EB Docket No. 02-367

445 12<sup>th</sup> Street, S.W.  
Washington, D.C.  
Room TW-A363

Wednesday  
January 23, 2003

The above-entitled matter came on for  
conference, pursuant to notice, at 9:30 a.m.

BEFORE:

Arthur Steinberg  
Administrative Law Judge

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APPEARANCES:On Behalf of Douglas M. Sutton, Jr, Prospective Intervener:

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On Behalf of the FCC:

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Enforcement Bureau  
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P-R-O-C-E-E-D-I-N-G-S

9:36 a.m.

ADMIN. JUDGE STEINBERG: We're on the record now. This is a pre-hearing conference in EB docket number 02-367, which was designated for hearing by order to show cause and notice of opportunity for hearing, FCC 02-319, released November 26, 2002.

The issues in this proceeding seek to determine whether the licensee -- whether the license for Station WMGA (**AM**), Moultrie, Georgia, should be revoked for allegedly transferring control of the station without Commission authorization, for allegedly violating several specified Commission rules, and for the alleged failure of the licensee to respond to Commission letters of inquiry.

In addition, the Order to Show Cause authorized the imposition of a forfeiture for the alleged violations. By order, FCC 02M-108, released December 4th, 2002, the Chief Administrative Law Judge assigned this case to me and scheduled the initial prehearing conference for this morning.

Let me first take the appearances for the

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1 parties. For Radio Moultrie, Incorporated, let the  
2 record reflect no response. In addition, I looked at  
3 the Commission's electronic filing comment system this  
4 morning before I came down here and it does -- the  
5 electronic filing system, does not reflect the filing  
6 of any notice of appearance on behalf of Radio  
7 Moultrie, Inc.

8 For the Chief, Enforcement Bureau, Federal  
9 Communications Commission?

10 MR. SHOOK: James Shook and Kenneth  
11 Scheibel.

12 ADMIN. JUDGE STEINBERG: And we had a  
13 petition for leave to intervene filed on behalf of  
14 Douglas M. Sutton, Jr. And **let** me take the appearance  
15 for him at this time.

16 MR. GARZIGLIA: Yes, Your Honor. John F.  
17 Garziglia of the law firm Womble, Carlyle, Sandridge  
18 & Rice, Washington, D.C., for Douglas **M.** Sutton, Jr.

19 ADMIN. JUDGE STEINBERG: Thank you. Let's  
20 turn first to the failure to file notice of  
21 appearance.

22 The Commission's records show -- I've been

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1       able to look, and my legal tech looked, and we found  
2       that the Commission's records show that the order to  
3       show cause was mailed by the Commission to Radio  
4       Moultrie, Inc., by certified mail receipt, return  
5       receipt requested.

6               The order to show cause was also mailed by  
7       certified mail, return receipt requested, to Mr. G.  
8       Chris Elder, who was identified in paragraph 10 of the  
9       order to show cause, as "RMI's principal" and at  
10      footnote 21 of the order to show cause as "RMI's  
11      corporate principal."

12             The Commission got back Mr. Elder's return  
13      receipt, which appears to have his signature  
14      indicating that he received a copy of the order to  
15      show cause, which was mailed to him.

16             The United States Postal Service returned  
17      to the Commission intact and unopened the entire  
18      envelope which was sent to Radio Moultrie,  
19      Incorporated. The return receipt, which was appended  
20      to the back of that envelope, was marked "refused."

21             Also, let me turn the microphone over to  
22      Mr. Shook or Mr. Scheibel, because apparently the

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1 Enforcement Bureau also mailed to Radio Moultrie, Inc.  
2 a copy of the order to show cause, and you've got  
3 other evidence of receipt and things like that?

4 MR. SHOOK: **We** do, Your Honor. Mr.  
5 Scheibel will address this.

6 ADMIN. JUDGE STEINBERG: Thank you.

7 MR SCHEIBEL: Yes, Your Honor. Radio  
8 Moultrie, Inc. was sent a certified copy of the order  
9 to show cause and it was received on December 2nd and  
10 signed for by an individual whose handwriting is  
11 unclear. But roughly --

12 ADMIN. JUDGE STEINBERG: DO you know who  
13 that looks like, a **Mr.** -- that looks like a Sullivan.  
14 Isn't somebody named Sullivan a principal?

15 MR SCHEIBEL: It may be. It's just that  
16 it's hard for me to read.

17 ADMIN. JUDGE STEINBERG: Yes. There's  
18 Paul --

19 MR SCHEIBEL: It might be a Paul Sullivan.  
20 but --

21 ADMIN. JUDGE STEINBERG: Paul Sullivan was  
22 identified in paragraph 13 of the order to show cause

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1 as, I guess, a --

2 MR SCHEIBEL: Right.

3 ADMIN. JUDGE STEINBERG: Somebody having  
4 to do with that.

5 MR SCHEIBEL: That --

6 ADMIN. JUDGE STEINBERG: So that could  
7 Paul Sullivan?

8 MR SCHEIBEL: Right. It's -- the print --

9 ADMIN. JUDGE STEINBERG: Yeah.

10 MR SCHEIBEL: -- version of his name isn't  
11 much clearer than the --

12 ADMIN. JUDGE STEINBERG: Yes, that's true.

13 MR SCHEIBEL: -- than the signature. In  
14 any event, reference to the U.S. Postal Service's  
15 track and confirm database yesterday afternoon  
16 indicated that that very letter was delivered at 11:40  
17 a.m. on December 2nd, 2002, to the addressee in  
18 Covington, Georgia.

19 ADMIN. JUDGE STEINBERG: Okay.

20 MR SCHEIBEL: Also, at the same time that  
21 Radio Moultrie was served, our office also sent a copy  
22 of the order to show cause to Mr. G. Chris Elder and

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1       that was signed for by a Susan Elder at the 1140  
2       Milstead Street, Conyers, Georgia, address. And her  
3       signature on the date of delivery, although it was not  
4       indicated, the U.S. Postal Service track and confirm  
5       database indicates that it was delivered at 2:59 p.m.  
6       on November 30th, 2002.

7               ADMIN. JUDGE STEINBERG: Okay. Given this  
8       information, I don't think there's any question at all  
9       that Radio Moultrie, Incorporated received a copy of  
10      the Commission's order to show cause and notice of  
11      opportunity for hearing.

12             In that order to show cause, in paragraph  
13      17, it directed that RMI, within 30 days of the  
14      receipt of the order, file a written notice of  
15      appearance. And I think, certainly, the 30 days has  
16      expired quite a long time ago.

17             Under section 1.92(a)(1) of the  
18      Commission's rules, as well as paragraph 17 of the  
19      order to show cause, both of those provide that under  
20      *the* circumstances that we just talked about, the  
21      failure to file the requisite notice of appearance  
22      constitutes a waiver of the right to a hearing.

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i                   And consequently, pursuant to section  
2                   1.92(c) of the rules, and paragraph 18 of the order to  
3                   show cause, the presiding judge will issue an order  
4                   reciting the events or circumstances constituting a  
5                   waiver of the hearing, and terminating the proceeding,  
6                   and certifying the case to the Commission

7                   Does anybody have any comments on that?  
8                   Mr. Garziglia?

9                   MR. GARZIGLIA: Your Honor, I would like  
10                  to comment for the limited purpose of the filing I  
11                  made on --

12                  ADMIN. JUDGE STEINBERG: Yes.

13                  MR. GARZIGLIA: -- December 23rd.

14                  ADMIN. JUDGE STEINBERG: Yes, I was going  
15                  to get to that next.

15                  MR. GARZIGLIA: And I'll ask for your  
17                  leave to comment at the appropriate time.

18                  ADMIN. JUDGE STEINBERG: Yes. But you  
19                  don't have any comment about me issuing an order  
20                  terminating the proceeding and certifying it in  
21                  accordance with the rules and the order to show cause?

22                  MR. GARZIGLIA: That appears to be the

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1 appropriate thing, Your Honor.

2 ADMIN. JUDGE STEINBERG: Thank you. Mr.  
3 Shook and Mr. Scheibel?

4 MR. SHOOK: We're every happy with that  
5 result, Your Honor.

6 ADMIN. JUDGE STEINBERG: Okay. Now the  
7 next thing is the petition for leave to intervene,  
8 which was filed by Mr. Sutton on December 23rd, 2002.  
9 And the Enforcement Bureau's comments in support of  
10 the petition to intervene filed on January 3rd, 2003.

11 Mr. Sutton seeks leave to intervene in  
12 this proceeding for the limited purpose of correcting  
13 the record to show that he holds no present ownership  
14 interest in Radio Moultrie, Incorporated, a licensee  
15 of Station WMGA (AM), and that he has not held any  
16 such interest since 1992.

17 In support, Mr. Sutton submits a copy of  
18 a Commission grant of a transfer of control  
19 application, whereby Mr. Sutton's interest in Radio  
20 Moultrie was sold to the other two principals of Radio  
21 Moultrie, and an ownership report filed with the  
22 Commission reflecting the consummation of the sale.

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1           The Commission grant was dated September  
2           29th, 1992, and the ownership report was dated December  
3           1st. 1992.

4           Mr. Sutton therefore requests leave to  
5           intervene for the sole purpose of making the  
6           Commission grant and the ownership report a part of  
7           the record of this proceeding, and for the purpose of  
8           requesting that any order or decision released as a  
9           result of this proceeding reflect that since September  
10          1992, Mr. Sutton has had no ownership interest in  
11          Radio Moultrie. The Bureau supports a grant of Mr.  
12          Sutton's motion.

13          The question I had is given the fact that  
14          this proceeding will be terminated, is there still a  
15          reason for intervention?

16          MR. GARZIGLIA: Your Honor, Mr. Sutton  
17          would be pleased if any subsequent order you would  
18          release that would go forward as a part of the record  
19          of this proceeding would simply correct the erroneous  
20          impression which was given in footnote number 6 of the  
21          November 26, 2002 order to show cause, if you would  
22          simply note in some fashion that this material is part

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1 of the official record of the Commission, that Mr.  
2 Sutton did file this -- these materials with you, that  
3 Bureau counsel supported the facts, the factual  
4 supported, the factual record recited, that -- and  
5 it's your conclusion that Mr. Sutton has had no -- has  
6 no ownership interest in Radio Moultrie, contrary to  
7 the impression that could have been left by footnote  
8 number 6, that would be what Mr. Sutton requests.

9 ADMIN. JUDGE STEINBERG: Okay. My problem  
10 is if there's no proceeding, if the proceeding is  
11 terminated even before it really starts, why even  
12 issue the order? I mean, your petition to intervene -  
13 - why can't I just dismiss both pleadings as moot,  
14 since there's no proceeding in which to intervene?  
15 And the petition to intervene, and the Bureau's  
16 comments in support will just speak for themselves.

17 MR. GARZIGLIA: Mr. Sutton still is a  
18 little bit concerned that the official pronouncements  
19 of the Commission, which is in the November 26, 2002  
20 order to show cause, leave the erroneous impression.

21 And while we appreciate that we have on  
22 the record our petition to intervene, and the Bureau's

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1        comments in support, there is *no* official recognition  
2        from the Commission that, indeed, that footnote was in  
3        error. And we would be appreciative of any official  
4        recognition of Your Honor which represents the  
5        Commission in this regard.

6                ADMIN. JUDGE STEINBERG: So you're asking  
7        me to make findings of fact in essence on the basis of  
8        a petition to intervene? I'm giving you a hard time.  
9        You know that. And because I can.

10               MR. GARZIGLIA: A footnote, Your Honor, in  
11        response to the commission's footnote, would be  
12        entirely sufficient.

13               ADMIN. JUDGE STEINBERG: Okay. Mr. Shook,  
14        Mr. Scheibel?

15               MR. SHOOK: Your Honor, first of all, our  
16        pleading speaks for itself. But more to the point of  
17        your question, we believe that your order certifying  
18        the matter to the Commission could also include within  
19        it an order that grants the petition. This is simply  
20        a mechanism for getting this information into the  
21        record at this stage.

22               And frankly, even if such were not done on

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1 your part, we have every intention of including that  
2 information in the final order that would be released  
3 by the Commission, so as to make it crystal clear that  
4 Mr. Sutton had left the scene long before there were  
5 any difficulties that we will --

6 ADMIN. JUDGE STEINBERG: Okay.

7 MR. SHOOK: -- say that Radio Moultrie  
8 had.

9 ADMIN. JUDGE STEINBERG: I'll take that  
10 matter under advisement. I don't want to commit  
11 myself this morning to such a momentous decision.

12 MR. GARZIGLIA: I appreciate that, Your  
13 Honor. Mr. Sutton is an esteemed broadcaster. He's -

14

15 ADMIN. JUDGE STEINBERG: Okay.

16 MR. GARZIGLIA: -- very concerned with how  
17 the world and the FCC views his record. And that's  
18 the purpose of my --

19 ADMIN. JUDGE STEINBERG: Okay. I might  
20 just grant leave, grant your petition for leave to  
21 intervene, and then you're a party to the proceeding  
22 and you can say whatever you want to say in subsequent

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1 things. But anyway, I'm just being -- I'm just being  
2 a troublemaker.

3 Is there anything else we have to talk about  
4 today? I mean, relating to this case? We can sit  
5 here and chat for the rest of the day, if you want,  
6 but --

7 MR. SHOOK: Your Honor, once again, it's  
8 been a pleasure doing business with you. But I  
9 believe we've completed all that we need to here.

10 ADMIN. JUDGE STEINBERG: Okay. Mr.  
11 Garziglia?

12 MR. GARZIGLIA: I have nothing further,  
13 Your Honor. Thank you very much.

14 ADMIN. JUDGE STEINBERG: Okay. Then we'll  
15 go off the record at this time and thank you all for  
16 coming.

17 (Whereupon, the hearing in the above-  
18 entitled matter was adjourned at 9:50 a.m.)

19  
20  
21  
22

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Transcript  
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RADIO MOULTRIE, INC.  
Name of Hearing

02-363  
Docket No. (if applicable)

WASHINGTON, D.C.  
Place of Hearing

JAN. 23, 2003  
Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 15, inclusive, are the true, accurate and complete transcript prepared from the reporting by

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